

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARGIE VASQUEZ, as Proposed
Administrator of the Estate of David
Vasquez,

Plaintiff,

- against -

PELHAM PARKWAY NURSING CARE
AND REHABILITATION FACILITY, LLC,
doing business as Pelham Parkway Nursing
Care and Rehabilitation Facility, ABC
CORPORATION, and ABC
PARTNERSHIP,

Defendants.

ORDER

22 Civ. 7691 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

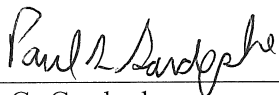
Defendant Pelham Parkway Nursing Care and Rehabilitation Facility, LLC (“Pelham”) removed this case from state court on September 9, 2022. (Notice of Removal (Dkt. No. 2)) Pelham contends that this Court has subject matter jurisdiction because (1) Plaintiff’s claims “arise under federal law, pursuant to 28 U.S.C. § 1331,” because the Public Readiness and Emergency Preparedness Act (“PREP Act”) “completely preempts [Plaintiff’s claims]” (*id.* ¶ 26); (2) “important federal questions are embedded in the litigation of [the] Complaint within the meaning of” *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005) (*id.* ¶ 31); and (3) the federal officer removal statute, 28 U.S.C. § 1442(a)(1), authorizes removal, because “Defendant’s response to the pandemic was at the specific direction and oversight of the federal government[. . .]” (*Id.* ¶ 33; *see also* Sept. 14, 2022 Def. Ltr. (Dkt. No. 3) at 2; Dec. 6, 2022 Def. Ltr. (Dkt. No. 6) at 2-5)

Defendant also requests that this Court stay consideration of the subject matter jurisdiction issue until the Second Circuit resolves Leroy v. Hume, Nos. 21-2158, 21-2159 (cons.), Rivera-Zayas v. Our Lady of Consolation Geriatric Care Ctr., No. 21-2164, and Solomon v. St. Joseph Hosp., No. 21-2729. (Dec. 6, 2022 Def. Ltr. (Dkt. No. 6) at 1)

Plaintiff will respond to Defendant's arguments concerning subject matter jurisdiction and its application for a stay by December 30, 2022.

Dated: New York, New York
December 16, 2022

SO ORDERED.



Paul G. Gardephe
United States District Judge